MT LEGISLATIVE HISTORY

Chapter 189 1987

Bill H_____ S 225 Original bill & hist. ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s)	C	Hearing Date(s)	C
3/6	✓C	2/6	✓C
	C		C
	C		C
Date Out 3/10	✓C	2/9	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report_____

	TRANSMITTED TO HOUSE		
2/18	REFERRED TO TAXATION		
3/04	REVISED FISCAL NOTE REQUESTED		
3/09	REVISED FISCAL NOTE RECEIVED		
3/27	HEARING		
4/07	COMMITTEE REPORT--BILL CONCURRED		
4/09	2ND READING CONCURRED	86	13
4/10	3RD READING CONCURRED	87	9
	RETURNED TO SENATE		
4/14	SIGNED BY PRESIDENT		
4/15	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 565 EFFECTIVE DATE: 10/01/87		

SB 225 INTRODUCED BY HALLIGAN
ADOPT THE UNIFORM PREMARITAL AGREEMENT ACT

1/27	INTRODUCED		
1/27	REFERRED TO JUDICIARY		
2/06	HEARING		
2/10	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	50	0
2/16	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/18	REFERRED TO JUDICIARY		
3/06	HEARING		
3/10	COMMITTEE REPORT--BILL CONCURRED		
3/13	2ND READING CONCURRED	93	2
3/14	3RD READING CONCURRED	91	6
	RETURNED TO SENATE		
3/19	SIGNED BY PRESIDENT		
3/20	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 189 EFFECTIVE DATE: 10/01/87		

SB 226 INTRODUCED BY HALLIGAN
REVISING PROCEDURES FOR YOUTH DETENTION
BY REQUEST OF JUVENILE JUSTICE COMMISSION

1/27	INTRODUCED		
1/27	REFERRED TO JUDICIARY		
1/27	FISCAL NOTE REQUESTED		
2/03	FISCAL NOTE RECEIVED		
2/17	HEARING		
2/19	COMMITTEE REPORT--BILL PASSED AS AMENDED		
2/21	STATEMENT OF INTENT ADOPTED		
2/21	2ND READING PASSED	49	0
2/23	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/24	REFERRED TO JUDICIARY		
3/20	HEARING		
3/23	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED	83	2
3/30	3RD READING CONCURRED	98	0
3/30	RECONSIDERED ACTION ON 3RD READING;		

SENATE BILL NO. 225

INTRODUCED BY HALLIGAN

IN THE SENATE

JANUARY 27, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 10, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 11, 1987	PRINTING REPORT.
FEBRUARY 13, 1987	SECOND READING, DO PASS.
FEBRUARY 14, 1987	ENGROSSING REPORT.
FEBRUARY 16, 1987	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 18, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 10, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 13, 1987	SECOND READING, CONCURRED IN.
MARCH 14, 1987	THIRD READING, CONCURRED IN. AYES, 91; NOES, 6.
	RETURNED TO SENATE.

IN THE SENATE

MARCH 17, 1987	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.

INTRODUCED BY Senate BILL NO. 225

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM PREMARITAL AGREEMENT ACT; AMENDING SECTIONS 40-2-312 THROUGH 40-2-314 AND 40-4-202, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the "Uniform Premarital Agreement Act".

NEW SECTION. Section 2. Application and construction. [Sections 1 through 10] must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of [sections 1 through 10] among the states enacting it.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

NEW SECTION. Section 4. Formalities. A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

NEW SECTION. Section 5. Content. (1) Parties to a premarital agreement may contract with respect to:

(a) the rights and obligations of each of the parties in any of the property of either or both of them, whenever and wherever acquired or located;

(b) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(c) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(d) the modification or elimination of spousal support;

(e) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(f) the ownership rights in and disposition of the death benefit from a life insurance policy;

(g) the choice of law governing the construction of the agreement; and

(h) any other matter, including their personal rights and obligations, not in violation of public policy or a

INTRODUCED BILL
SB-225

statute imposing a criminal penalty.

(2) The right of a child to support may not be adversely affected by a premarital agreement.

NEW SECTION. Section 6. When agreement becomes effective. A premarital agreement becomes effective upon marriage.

NEW SECTION. Section 7. Amendment -- revocation. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by both parties. The amended agreement or the revocation is enforceable without consideration.

NEW SECTION. Section 8. Enforcement. (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) that party did not execute the agreement voluntarily; or

(b) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an

adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement must be decided by the court as a matter of law.

NEW SECTION. Section 9. Enforcement when marriage void. If a marriage is declared invalid, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

NEW SECTION. Section 10. Limitation of actions. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Section 11. Section 40-2-312, MCA, is amended to read:

"40-2-312. Marriage settlement contracts -- how executed. ~~All~~ Except as provided in [sections 1 through 10], all contracts for marriage settlements must be in writing and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved."

Section 12. Section 40-2-313, MCA, is amended to read:

"40-2-313. Contract to be acknowledged and recorded. ~~When~~ Except as provided in [sections 1 through 10], if such contract is acknowledged or proved, it must be recorded in the office of the county clerk of every county in which any real estate which is granted or affected by such contract may be situated."

Section 13. Section 40-2-314, MCA, is amended to read:

"40-2-314. Effect of recording. ~~The~~ Except as provided in [sections 1 through 10], the recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property."

Section 14. Section 40-4-202, MCA, is amended to read:

"40-4-202. Division of property. (1) In a proceeding for dissolution of a marriage, legal separation, or division of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without regard to marital

misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; ~~antenuptial~~ premarital agreement of the parties; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which such contributions have facilitated the maintenance of this property; and

(c) whether or not the property division serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

(3) Each spouse is considered to have a common ownership in marital property that vests immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must be determined and made final by the court pursuant to this section.

(4) The division and apportionment of marital property caused by or incident to a decree of dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

(a) the property laws of this state;

(b) the income tax laws of this state; and

(c) the federal income tax laws."

NEW SECTION. Section 15. Codification instruction. Sections 1 through 10 are intended to be codified as an integral part of Title 40, chapter 2, and the provisions of Title 40, chapter 2, apply to sections 1 through 10.

NEW SECTION. Section 16. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Applicability. This act applies to premarital agreements executed on or after October 1, 1987.

-End-

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0173	1/21	2/03		DO PASS		2/5
BROWN, ROBERT J.			REVISE SPOUSAL PRIVILEGE			
SB0181	1/21	1/29		PASS AS AMENDED		2/3
VAN VALKENBURG, FRED			SUSPENDING DRIVER'S LICENSE FOR FAILURE TO APPEAR OR TO PAY FINE			
SB0188	2/05			PASS AS AMENDED		2/18
WALKER, MIKE			DISCLOSURE OF ELECTRONIC FUNDS TRANSACTION PURSUANT TO SUBPOENA			
SB0189	1/21	1/28		PASS AS AMENDED		2/3
VAN VALKENBURG, FRED			DISCLOSURE OF IDENTITY OF YOUTH POSSESSING INTOXICATING SUBSTANCE	Tabled 1/30		
SB0190	1/21	1/28		DO PASS		1/28
LYBECK, RAY			REQUIRING MORTGAGOR ACKNOWLEDGE MORTGAGED PROPERTY NOT EXEMPT AS HOMESTEAD			
SB0209	1/24	2/11				—
HALLIGAN, MIKE			CHILD ABUSE/NEGLECT -- SRS PERMANENT CUSTODY TO ALLOW ADOPTION			
SB0214	1/24	2/04		DO PASS		2/4
MAZUREK, JOSEPH P.			REQUIRING SRS CONSENT BEFORE RELINQUISHING PARENTAL RIGHTS			
SB0220	1/24	2/04		PASS AS AMENDED		2/5
YELLOWTAIL JR, WILLIAM P.			REVISE DISTRICT COURT FEES FOR INCIDENTAL CHARGES			
SB0223	1/27	2/06		PASS AS AMENDED		2/20
ECK, DOROTHY			ESTABLISH PRIVILEGE FROM EXAMINATION FOR MEDIATORS	Tabled 4/3		
SB0225	1/27	2/06		PASS AS AMENDED		2/9
HALLIGAN, MIKE			ADOPT THE UNIFORM PREMARITAL AGREEMENT ACT			
SB0226	1/27	2/17		DO PASS		2/12

MONTANA STATE SENATE

JUDICIARY COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS: Senator Joe Mazurek, Chairman
Senator Bruce Crippen, V. Chairman
Senator Tom Beck
Senator Al Bishop
Senator Chet Blaylock
Senator Bob Brown
Senator Jack Galt
Senator Mike Halligan
Senator Dick Pinsoneault
Senator Bill Yellowtail

STAFF ATTORNEY: Valencia Lane

COMMITTEE SECRETARY: Mary Huber

BOOK: 1 of 4

INCLUSIVE DATES: January 6 - January 30, 1987

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 6, 1987

The twenty-third meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 6, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION ON SB 241: Senator Tom Keating of Billings introduced SB 241 see Exhibit 1).

PROPONENTS: Gary Carrell, Department of Justice, supported the bill (see Exhibit 2, written testimony).

Mark Murphy, Attorney General's Office, said the bill expands along the same line as the federal government allows with forfeitures of drug offender's property. He stated the state uses a civil procedure while the federal government usually use a criminal procedure. He felt the bill allows good cooperation between the federal agencies and state agencies that deal with drug trafficing. He felt the bill will allow more enforcement also.

Kevin Olson, Havre Police Department, supported the bill (see Exhibit 3).

OPPONENTS: None

DISCUSSION ON SB 241: Senator Pinsoneault asked if someone is raising marijuana on a 1 acre plot that is part of a 40 acre plot, would the offender have to forfeit over the whole 40 acres. Mr. Murphy said the property that is used in the offense will be taken, but if the rest of the property is found to be used as a concealer, then the law could take all 40 acres. Senator Pinsoneault asked how the department plans to get rid of the preperty, so the department just doesn't sit with the property. Mr. Murphy said it is treated as a tax seizure and is sold under a tax deed. Senator Pinsoneault questioned on page 2 of the bill that if someone had 300 grams of marijuana, the court could take the car the police stopped the offender in, but if the amount the offender was carrying was only 250 grams, then you could not take the car that he was driving at the time. Mr. Murphy replied that was correct.

Senator Crippen asked what will happen to property that is seized that is jointly owned and the second co-owner doesn't know about the first

CONSIDERATION ON SB 225: Senator Mike Halligan of Missoula introduced SB 225 (see Exhibit 5).

PROPONENTS: Bruce Barrett, University of Montana Attorney, handed out an outline on the bill (Exhibit 6). He said a premarital agreement will solidify the relationship. He said Montana has no law that pretains to a premarital agreement. He said a marriage is a contract no matter what anyone says. He felt two groups of people will benefit from this act. He said the older widower or widow will use this agreement because of remarrying later and wanting to preserve their estate for their first families. He said the second group will be the young professionals because they have waited to get married and probably have more assets then most young married couples that are not established professionally. He said a judge must enforce a premarital agreement because what would be the use of having one if the judge will not even look at it in a divorce case. He said it will be useless, unless the judge takes it seriously. He commented on page 5, section 40-4-202, which is when a judge considers a divorce he has a laundry list of things to look at including premarital agreements. He said the language on that page made the premarital agreement just another factor to look at, so it might not be enforced. He felt the premarital agreement did not need to be recorded at the clerk and recorder's office because of the expense of doing it.

OPPONENTS: None

DISCUSSION ON SB 255: Senator Crippen dreamed up a story about Senator Brown and asked the question of how one can get out of one these agreements. Senator Halligan said section 8 deals with these kinds of situations when one of the partners would like to get out of the agreement. Mr. Barrett gave example of a young farmer's family that made his finance sign one of these agreements, so she will not take the farm if something happens to the marriage. He said the woman might give the best years of her life to this farmer and something goes wrong and she is stuck with the premarital agreement. He said everyone wants to put in escape clause all the time, but this will ruin the credibility of the agreement if there are exceptions. He said the judge must look at the agreement with seriousness. Senator Pinsoneault asked how many other states have adopted this. Mr. Barrett said four states have adopted it.

Senator Halligan closed.

The committee adjourned the hearings for executive action.

ACTION ON SB 223: Senator Pinsoneault wished Mr. Dodge was more specific in his letter. Senator Galt stated there are quite a few unlicensed arbitrators running around in the agricultural departments. Senator Galt felt these arbitrators were not that well trained in their field. Senator Brown wondered if these groups of arbitrators and mediators deal

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Feb. 6

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

EXHIBIT NO. 5
DATE FEB. 6, 1987
BILL NO. SB 225

SUMMARY OF SB225 (HALLIGAN)

(Prepared by Senate Judiciary Committee staff)

SB225 adopts the Uniform Premarital Agreement Act. Section 1 defines "premarital agreement" as an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage. The agreement must be in writing, signed by both parties, and becomes effective upon the marriage of the parties. The act does not deal with agreements between persons who live together but who do not contemplate marriage or who do not marry and it does not provide for postnuptial or separation agreements or oral agreements.

Section 8 of the Act sets forth the conditions under which a premarital greement is not enforceable. An agreement can not be enforced if it was not voluntary or is unconscionable. If an agreement modifies or eliminates spousal support and that modification or elimination would cause a party to be eligible for support under a public assistance program at the time of separation, dissolution, or death, a court is authorized to order the other party to provide support to the extent necessary to avoid that eligibility.

COMMENTS: None.

C:\LANE\WP\SUMSB225.

SENATE JUDICIARY
EXHIBIT NO. 6
DATE Feb. 6, 198
BILL NO. SB 225

UNIFORM PREMARITAL AGREEMENT ACT

Main points

I. Status of Pre-marital Agreements in Montana

a. Virtually no case law
b. Montana "Divorce" Laws require judge to consider Pre-nuptial agreements, but gives them no more weight than any other factor. (MCA 40-4-202(1)).
c. No predictability for enforcement of agreement, difficulties in tax, estate, and other planning.

II. Parties Benefiting From Act

a. Older parties entering 2nd marriage seeking to protect & preserve their estate for their first family
b. Educated professionals who wish predictability and to formalize their economic relationship.

III. Major Points Of The Act

a. Allows Agreements
b. Agreement May Be Amended By Parties During Marriage
c. Requires Judge To Observe Agreement, Agreements difficult to overturn
d. Though agreements will not be common, those who choose one will be given certainty & predictability

TESTIMONY OF BRUCE BARRETT, ATTORNEY
1945 McDonald
Missoula, MT 59801 542-2563/243-6213

DATE Feb. 6

COMMITTEE ON

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppo
Mike Dwyer	Dept. of Justice	SB241	✓	
Tracy Beaver	Havre Police Dept	SB241	✓	
Kevin Olson	Havre Police Dept / State P.P.A	SB241	✓	
Bruce Barrett	Attorney.	SB225	✓	
Pat Driscoll	AG	SB225	✓	

(Please leave prepared statement with Secretary)

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 9, 1987

The twenty-fourth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 9, 1987 by Chairman Joe Mazurek in Room 325 of the State Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL 256: Senator Judy Jacobson, Butte, introduced SB 256, regarding an act to clarify the responsibility of the Dept. of Social and Rehabilitation Services to conduct custody investigations and to allow the department to charge a fee for custody investigations. (Exhibit 1)

PROPONENTS: John Mattson, Department of SRS, said SRS wants out of custody investigations and we feel it is inappropriate use of our time to do custody investigations. He stated there are communities where there are not other people that can do custody investigations, and therefore, the agency would be doing the studies, but having the agency charge the fee. He gave an example of what the fee would be where the state of Idaho has a similar statute where they have a flat fee of $600. They charge that fee and it needs to be paid prior to the custody investigation. He said the parties come in and pay the $600 and the agency will do the investigation and give the results.

OPPONENTS: There were no opponents.

QUESTIONS BY THE COMMITTEE ON SB 256: Senator Pinsoneault asked if Idaho had any provision in the law if neither party can afford the $600 to do an investigation.

Mr. Mattson replied he was not aware of one, but their intention would be that in the rules we would allow for matters of indigency, to be able to waive the fee.

ACTION ON SENATE BILL 225: Valencia Lane handed out amendments. (Exhibit 4)

Senator Halligan moved the amendments. Senator Halligan asked if the Clerk and Recorders would have to spend a lot of time with this statute. Senator Mazurek said no. The motion CARRIED.

Senator Halligan moved the bill DO PASS AS AMENDED. The motion CARRIED with Senator Crippen voting no.

ADJOURNMENT: The committee adjourned at 11:55 a.m.

SENATOR JOE MAZUREK, Chairman

mh

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Feb. 9th

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

EXHIBIT NO. 4
DATE Feb. 4, 1987
BILL NO. SB 225

Proposed amendments to SB225 (Halligan) -- prepared by Senate Judiciary Committee staff.

1. Title, line 5.
Following: "40-2-312"
Strike: "THROUGH"
Insert: ","

2. Title, line 6.
Following: "40-2-314"
Insert: ","
Following: "MCA;"
Insert: "REPEALING SECTION 40-2-313, MCA;"

3. Page 5, lines 7 through 13.
Strike: section 12 in its entirety
Renumber: subsequent sections

4. Page 6, line 8.
Following: line 7
Strike: "premarital agreement of the parties;"

5. Page 8, line 2.
Following: line 1
Insert: "(5) Premarital agreements must be enforced as provided in [sections 1 through 10].
NEW SECTION. Section 14. Repealer. Section 40-2-313, MCA, is repealed."

C:\LANE\WP\AMDSB225.

STANDING COMMITTEE REPORT

February 9 19 87

MR. PRESIDENT

We, your committee on Senate Judiciary

having had under consideration SENATE BILL No. 225

first reading copy (white color)

Adopt the uniform premarital agreement act.

Respectfully report as follows: That SENATE BILL No. 225

BE AMENDED AS FOLLOWS:

1. Title, line 5.
Following: "40-2-312"
Strike: "THROUGH"
Insert: ","

2. Title, line 6.
Following: "40-2-314"
Insert: ","
Following: "MCA;"
Insert: "REPEALING SECTION 40-2-313, MCA;"

3. Page 5, lines 7 through 13.
Strike: section 12 in its entirety
Renumber: subsequent sections

4. Page 6, line 8.
Following: line 7
Strike: "premarital agreement of the parties;"

5. Page 8, line 2.
Following: line 1
Insert: "(5) Premarital agreements must be enforced as provided in (sections 1 through 10).
NEW SECTION. Section 14. Repealer. Section 40-2-313, MCA, is repealed."

DO PASS

DO NOT PASS

BEST COPY AVAILABLE

Senate Hazurek Chairman.

Form CS-32
Rev. 1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURR IN AS AMENDE DATE
181		3/13/87								3/24/87	
189		3/9/87								3/19/87	
190		3/9/87	tabled 3/10/87							reconsidered 4/8/87	
195		3/9/87						3/10/87			
214		3/11/87						3/13/87			
223		3/18/87						3/23/87			
225		3/6/87						3/10/87			
226		3/16/87								3/23/87	
229	3/3/87	3/12/87	tabled 3/23/87					reconsidered 3/26/87			
241		3/16/87								3/23/87	
249		3/10/87						3/13/87			
254		3/10/87	tabled 3/11/87								
256		3/4/87	3/4/87					3/4/87			
257		3/16/87									

JUDICIARY COMMITTEE

50TH LEGISLATIVE SESSION

1987

Committee Members	District
Rep. Earl Lory, Chairman	59
Rep. John Mercer, Vice Chairman	50
Rep. Kelly Addy	94
Rep. Dave Brown	72
Rep. Tom Bulger	37
Rep. John Cobb	42
Rep. Fritz Daily	69
Rep. Paula Darko.	2
Rep. Ralph Eudaily	60
Rep. Leo Giacometto	24
Rep. Bud Gould	61
Rep. Ed Grady	47
Rep. Tom Hannah	86
Rep. Vernon Keller	83
Rep. Al Meyers	53
Rep. Joan Miles	45
Rep. Paul Rapp-Svrcek	51
Rep. Bill Strizich	41

Secretary

Renee Podell

Staff

John McMaster

SENATE BILL NO. 225

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT THE UNIFORM PREMARITAL AGREEMENT ACT; AMENDING SECTIONS 40-2-312, ~~THROUGH~~ 40-2-314, AND 40-4-202, MCA; REPEALING SECTION 40-2-313, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the "Uniform Premarital Agreement Act".

NEW SECTION. Section 2. Application and construction. [Sections 1 through 10] must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of [sections 1 through 10] among the states enacting it.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 10], the following definitions apply:

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(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

NEW SECTION. Section 4. Formalities. A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

NEW SECTION. Section 5. Content. (1) Parties to a premarital agreement may contract with respect to:

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(c) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(d) the modification or elimination of spousal support;

(e) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(f) the ownership rights in and disposition of the death benefit from a life insurance policy;

(g) the choice of law governing the construction of the agreement; and

(h) any other matter, including their personal rights and obligations, not in violation of public policy or a

statute imposing a criminal penalty.

(2) The right of a child to support may not be adversely affected by a premarital agreement.

NEW SECTION. Section 6. When agreement becomes effective. A premarital agreement becomes effective upon marriage.

NEW SECTION. Section 7. Amendment -- revocation. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by both parties. The amended agreement or the revocation is enforceable without consideration.

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(a) that party did not execute the agreement voluntarily; or

(b) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an

adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement must be decided by the court as a matter of law.

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"40-2-312. Marriage settlement contracts -- how executed. ~~All~~ Except as provided in [sections 1 through 10], all contracts for marriage settlements must be in writing and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved."

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~~"40-2-313. Contract to be acknowledged and recorded. When Except as provided in [sections 1 through 10], if such contract is acknowledged or proved, it must be recorded in the office of the county clerk of every county in which any real estate which is granted or affected by such contract may be situated."~~

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"40-4-202. Division of property. (1) In a proceeding for dissolution of a marriage, legal separation, or division of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without regard to marital

misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; ~~antenuptial~~ premarital ~~agreement of the parties~~, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which such contributions have facilitated the maintenance of this property; and

(c) whether or not the property division serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

(3) Each spouse is considered to have a common ownership in marital property that vests immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must be determined and made final by the court pursuant to this section.

(4) The division and apportionment of marital property caused by or incident to a decree of dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

(a) the property laws of this state;

(b) the income tax laws of this state; and

(c) the federal income tax laws.

(5) PREMARITAL AGREEMENTS MUST BE ENFORCED AS PROVIDED IN [SECTIONS 1 THROUGH 10]."

NEW SECTION. SECTION 14. REPEALER. SECTION 40-2-313, MCA, IS REPEALED.

NEW SECTION. Section 15. Codification instruction. Sections 1 through 10 are intended to be codified as an integral part of Title 40, chapter 2, and the provisions of Title 40, chapter 2, apply to sections 1 through 10.

NEW SECTION. Section 16. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 17. Applicability. This act applies to premarital agreements executed on or after October 1, 1987.

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 6, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 6, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Bulger and Rep. Hannah who were absent and Rep. Daily who was excused.

SENATE BILL NO. 134: Senator Beck, District No. 24, sponsor, stated this was a bill to make the crime of conveying a dangerous drug to a person, subject to official detention, a felony punishable by a prison term not to exceed ten years. He presented Mr. Chisolm of the Department of Institutions who spoke further on the bill.

Kurt Chisolm, Deputy Director of the Department of Institutions, explained it was the department's desire to make it a felony to smuggle a weapon into an inmate of the prison. They want to include the provision it is also a felony punishable by ten years in prison for smuggling a dangerous drug into the prison. Approximately 4 or 5 times a year, individuals are caught trying to transfer illegal soft drugs into the prison. A person convicted of the offense of unauthorized communication shall be fined not to exceed $100.00 or imprisoned in the county jail for any term not to exceed 10 days, or both. This bill would help correct some of the major problems in the Montana prison system.

There were no further proponents, no opponents and no questions from the committee.

Senator Beck closed the hearing on Senate Bill No. 134.

SENATE BILL NO. 102: Senator Story, District No. 41, stated this was a short technical bill that was simple and straight forward. It was a correction to the water right laws passed recently. Where there are ditch rights, they are measured simply by flow rights. Reservoirs which have, historically, been measured by both flow and volume will still be measured by flow and volume. Other rights, such as water spread, are measured by volume. The reason for the amendment and the importance of it, was that most of the rights were for irrigating and were ditch rights. The new constitution guarantee the old rights which were measured in flow.

proceedings. Currently, a holder of a right must put the water to beneficial use.

Rep. Lory asked Senator Story, since 1973, one had to file on both flow and volume. Senator Story said if a new right were filed, as of 1977, it required filing on both flow and volume.

Senator Story closed the hearing on SB #102 by stating the bill was a necessary and good bill.

SENATE BILL NO. 225: Senator Halligan, District No. 29, stated the bill was a uniform act and dealt with marriage and dissolution and was a uniform premarital agreement act. This act is allowed under Montana statute presently but there were no guidelines set up. The uniform act was a tool for setting up a premarital agreement.

PROPONENTS: Bruce Barrett, Attorney for the University of Montana students, presented written testimony. (Exhibit A). He stated the major points of the act were that it allowed agreements which may be amended by parties during marriage. The act would require a judge to observe the agreements, which are difficult to overturn, and those who chose one would be given certainty and predictability.

Anne Hamilton, stated the premarital agreements were a good thing and it was good that the bill had flexibility to allow changes after marriage.

There were no opponents.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 225: Rep. Mercer asked Mr. Barrett about the new section on page three, regarding the unconscionable standard. Mr. Barrett said the section was what made it hard to overturn an agreement by a judge. Basically, the law allows someone to enter into an unfair agreement as long as he knew what he was doing. Rep. Lory stated he received a letter from a lady in Western Montana pursuant to this kind of agreement, and she requested an amendment be added stating that when assets are found that are not listed in the agreement, they should be listed as community property.Rep. Lory asked what Mr. Barrett thought of the idea. Mr. Barrett said that first, the seriousness of the non-disclosure would have to be decided and then the judge would have to decide what to do with the property. He felt the bill was better without the amendment.

Rep. Mercer said the letter referred to was asking for us to require that any agreement such as this had to specify the property, and if it was not listed, it should be treated as

joint property. Mr. Barrett said there was a right to waive disclosure in the bill.

Rep. Eudaily asked Mr. Barrett when it would go into effect. He said it would go into effect on the date of marriage.

Senator Halligan closed the hearing on Senate Bill No. 225.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 134: Rep. Brown moved that SB #134, Be Concurred In. Question was called and a voice vote was taken. The motion carried unanimously. SB #134 BE CONCURRED IN.

ADJOURNMENT: There being no further business to come before the committee, the hearing was adjourned at 9:25 a.m.

Earl Lory

Earl Lory, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 6, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)		✓	
JOAN MILES (D)	✓		
FRITZ DAILY (D)		✓	✓
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

EXHIBIT 4
DATE 3-6-87
HB 38 #225

UNIFORM PREMARITAL AGREEMENT ACT

Main points

I. Status of Pre-marital Agreements in Montana

a. Virtually no case law
b. Montana "Divorce" Laws require judge to consider Pre-nuptial agreements, but gives them no more weight than any other factor. (MCA 40-4-202(1)).
c. No predictability for enforcement of agreement, difficulties in tax, estate, and other planning.

II. Parties Benefiting From Act

a. Older parties entering 2nd marriage seeking to protect & preserve their estate for their first family
b. Educated professionals who wish predictability and to formalize their economic relationship.

III. Major Points Of The Act

a. Allows Agreements
b. Agreement May Be Amended By Parties During Marriage
c. Requires Judge To Observe Agreement, Agreements difficult to overturn
d. Though agreements will not be common, those who choose one will be given certainty & predictability

TESTIMONY OF BRUCE BARRETT, ATTORNEY
1945 McDonald
Missoula, MT 59801 542-2563/243-6213

VISITORS' REGISTER

JUDICIARY COMMITTEE

SENATE
BILL NO. 225 DATE March 6, 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
BRUCE BARRETT	ValM Students	✓	
Anne Hamilton	myself	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES OF THE MEETING
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50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 10, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 10, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Grady who was absent.

EXECUTIVE SESSION:

SENATE BILL NO. 24: Rep. Brown moved that SB 24, BE NOT CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED 10-5. SB 25, BE NOT CONCURRED IN.

SENATE BILL NO. 25: Rep. Brown moved to reconsider action on SB 25. Rep. Gould stated certain people he has spoken to feel this is a good bill. Rep. Brown pointed out that his problem with the bill is that we have always maintained the distinction between what is done within the family and what is done outside the family. This is a protection for the bartender but he said that he just does not see the need for passing this bill. Rep. Keller stated that children start drinking too young and this is just another way to start children off drinking. This bill might discourage parents from encouraging drinking at a young age. Rep. Bulger agreed with Rep. Brown. He said there was not any testimony insisting there was an active problem. Rep. Daily acknowledged there is just too much legislation and here is a case where a problem has been created by such a bill. Question was called and a voice vote was taken on the motion to reconsider. The motion CARRIED 10-7. Rep. Brown moved that SB 25, BE NOT CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED 9-7. SB 25, BE NOT CONCURRED IN.

SENATE BILL NO. 119: Rep. Brown moved that SB 119 BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 119, BE CONCURRED IN.

SENATE BILL NO. 190: Rep. Mercer stated there are serious concerns regarding this bill and it needs a new approach. Rep. Addy moved to TABLE the bill. Question was called and a voice vote was taken. The motion CARRIED 16-1, with Rep. Miles dissenting. SB 190, TABLED.

SENATE BILL NO. 195: Rep. Bulger moved that SB 195, BE CONCURRED IN. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 195, BE CONCURRED IN.

SENATE BILL NO. 225: Rep. Addy moved BE CONCURRED IN. Rep. Gould asked Rep. Addy if this bill will make it so that prenuptial agreements will mean something. Rep. Addy pointed out that it will give them greater weight in divorce proceedings. Rep. Keller questioned section 8 in regard to a prenuptial agreement not being enforceable if a party does not disclose all financial property. Rep. Addy stated he feels it will be covered. Question was called and a voice vote was taken. The motion CARRIED 14-2 with Reps. Cobb and Brown dissenting. SB 225, BE CONCURRED IN.

SENATE BILL NO. 51: Senator Brown, District No. 2, sponsor, stated this bill deals with a subject area that is not new. It revises the laws relating to liability in certain cases. It also eliminates joint liability. He pointed out that section 1 of the bill clarifies that negligence would be compared to all of the parties that have contributed to the injury. Section 2 on page 4 contains the real change in the law. The bill eliminates the concept of joint liability for a person 25% or less negligent. The bill also clarifies that total damages are based on the negligence of all persons involved in determining individual liability.

PROPONENTS: JIM ROBISCHON, Montana Liability Coalition, stated the cornerstone to legislative tort reform in Montana has to involve a law that matches liability for the payment of damages in tort to the degree of fault for the party to pay the damages. SB 51 is a step in the right direction but falls short of the goals of the Liability Coalition in this the most important of matters to be presented to this session.

H.S. HANSON, Montana Technical Council, acknowledged that any bill on tort reform is better than what Montana has had in the past. Joint and several liability leads to a search for a "deep pocket" and has made governments, large corporations and other insured entities bear the greatest burdens of liability when their involvement in an injury is minimal. The only exception where joint liability should be retained shall be where the defendants acted in concert. Joint liability shall be imposed on all who pursue a common plan or design to commit a tortuous act or actively take part in it. He submitted written testimony as Exhibit A. He also submitted an Application of the Doctrine of Joint and Several Liability. (Exhibit B).

DAILY ROLL CALL

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50th LEGISLATIVE SESSION -- 1987

Date March 10, 1987

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DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

STANDING COMMITTEE REPORT

MARCH 10, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. 225

- ☐ do pass
- ☐ do not pass
- ☒ be concurred in
- ☐ be not concurred in
- ☐ as amended
- ☐ statement of intent attached

Chairman

THIRD reading copy (BLUE color)

REP. ADDY WILL CARRY THE BILL!

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REFERENCE BILL

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